IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 830 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAMDAR RAJYA VIMA YOJANA DRESSER KARMACHARI SANGH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 830 of 1992

MR SV PARMAR for Petitioner No. 1-3

MR ND GOHIL, AGP for Respondents

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 30/09/2004

ORAL JUDGEMENT

In this petition, the petitioner has prayed for a direction against the respondents to place the members of the petitioner-Union, who are working as Dressers, in the

pay-scale of Rs.950-1400 with effect from 1.1.86 and pay consequential benefits of such a direction. Though certain other prayers including the prayer regarding challenge to the constitutional validity of rule 4 of Gujarat Civil Services (Revision of Pay) Rules 1987 have been made, learned counsel for the petitioners does not press for any other prayers except for a direction as mentioned above.

2. Briefly stated, the case of the petitioners is that the members of the petitioner No.1 Union are working as Dressers in the Health Department of the Government of Gujarat. It is the case of the petitioners that these Dressers are being meted out discriminatory treatment regarding the fixation of their pay-scale. It is the case of the petitioners that the Dressers are placed in the scale of Rs.800-1150 and continue to draw the pay in the said scale even after 1.1.86 whereas all other Class III posts carry the scale higher than or at least that of Rs.950-1400 with effect from 1.1.86. It is the case of the petitioners that the posts of Dressers fall under Class III category and the attempt to place them under Class IV category is illegal and unlawful. The petitioners have produced on record certain circulars of the Government by which the posts of Dressers are sought to be placed in Class IV category which according to the learned advocate for the petitioners is illegal. He has submitted that the post of Dressers was placed in Class III category pursuant to amendment in the Rules and therefore, Dressers cannot be pushed down to Class IV category without further amending the relevant rules. He submits that such a change cannot be brought about by executive instructions.

3. On the basis of the above submissions, it is sought to be suggested that the posts of Dressers should be placed in the pay-scale of Rs.950-1400 with effect from 1.1.86.

4. Learned advocate for the petitioners has also pointed out from the material on record that the post of Dressers requires a certain minimum qualifications. He has pointed out that for being recruited as Dresser, a person must have completed the Dresser's course of the Civil Hospital or the Dresser's course on Hospital Assistant and that he should have worked as a Dresser at least for a period of two years with a qualified doctor. He has also pointed out that the duties and responsibilities to be carried out by the Dressers are also laid down in the circular dated 28.1.92 and if one peruses these duties, according to the learned advocate

for the petitioner, duties are of clerical nature and require special skills. From the circular dated 19th February 1973, he has also pointed out that in absence of trained Nurses, Dressers are also given the work of Nurse. From the letter dated dated 11.5.89, written by the Director of Health Services to the Additional Chief Secretary to the Government of Gujarat, Health and Family Welfare Department, it is pointed out that even the Director of Health Services had recommended that the Dressers be placed in the scale of Rs.950-1400. He has, however, submitted that the Pay Commission did not recommend the revision of pay in favour of Dressers and even the Anomaly Committee did not recommend any further revision. He has submitted that the decisions of the Pay Commission and that of the Anomaly Committee are arbitrary, unjust and discriminatory.

5. Learned advocate for the petitioner has submitted that since the posts of Dressers belong to Class III category of posts, the pay scale of Rs.800-1150 is unjust and he has also submitted that since the Dressers discharge duty of clerical nature, they must be paid the salary in the scale of Rs.950-1400 which is minimum of the salary scale of any Class III category posts.

6. Appearing for the respondents, learned AGP has opposed the petition. Relying on the affidavit in reply, he has submitted that the petitioners are not entitled to the relief as claimed for.

7. Placing a particular post in any category is not determinative of the pay-scale which is to be attached to such post. Pay-scales in Government service are recommended by Pay Commissions and if such recommendations are accepted by the Government, they form part of the pay-scale applicable to the post. Learned advocate for the petitioner has not been able to point out anything which suggests that by being placed in Class III category, the post must carry certain minimum pay-scale. In fact, from rule 9(27) of the BCSR also it can be seen that Class IV services is defined as service performed by the Government servants included in Appendix III and service remunerated in a time scale of pay, the maximum of which does not exceed Rs.270/- in the case of Government servants not so included.

8. From the said rule, it can therefore be seen that class IV services are those included in Appendix III and though not included in Appendix III, but do not carry a maximum pay not exceeding Rs.270/- (pre-revised). The intention is, therefore, clear and the categorization of

a particular post in a certain class of posts is not conclusive of the scale of pay to be attached to such a post. Thus, there may be a post in Class III category, if so specified under the Rules but may carry a pay less than Rs.270/- (pre-revised). In my view, therefore, placing of a particular post in a particular category would not decide the pay-scale to be attached to such a post. In that view of the matter, the contention of the learned advocate for the petitioners that the posts of Dressers should be treated as Class III posts need not be decided in the present petition since even if such a contention is accepted, it would not carry the case of the petitioners any further in their demand for pay-scale of Rs.950-1400 for the post of Dressers.

9. What pay-scale should be attached to the post of Dressers is the task to be performed by the Pay Commissions and by the appropriate Government while examining and accepting with or without modifications the recommendations of the Pay Commissions. It is by now well settled that it is not the task of the Courts to decide what pay scale should be attached to which posts and such task should be left to the expert bodies such as, Pay Commissions and for the Government finally to take decisions on such recommendations.

10. In the decision reported in 2004 (2) GLH 50 (State of Gujarat v. Saurshatra Mazdoor Sangh) a Division Bench of this Court has observed that determination of pay-scales is the primary function of the Executive and not that of the Judiciary and Courts ordinarily ought not to enter into such a task on job evaluation. In the decision reported in (2003) 11 SCC 658 (Union of India v. Tarit Ranjan Das), the Hon'ble Supreme Court was pleased to observe that the principles of "equal pay for equal work" cannot be applied merely on the basis of designation or nature of work and other relevant factors are also required to be taken into account and the burden of proof of equality lies on the employees who claims such parity.

11. In the decision reported in (2004) 4 SCC 646 (M.P.Rural Agriculture Extension Officers Assn. v. State of M.P.), once again the Hon'ble Supreme Court was pleased to observe that equal pay for equal work principle cannot be applied in abstract and it is open for the employer to prescribe two different pay-scales in the same cadre on the basis of educational qualifications. It was also observed that the recommendations made by the Pay Commission are not binding on the State Government and cannot be enforced by

issuing a writ of mandamus. It can thus be seen that in absence of sufficient material, it is not possible for this Court to come to a conclusion that the pay-scale prescribed for the post of Dresser is not correct and that some other scale should have been adopted. The present case is not one of equal pay for equal work since the petitioners have not based their claim on any other posts where employees are claimed to be doing similar nature of work. In that view of the matter, it is not at all possible for this Court to come to the conclusion that the pay-scales prescribed by the Government for the posts in question is arbitrary or unreasonable or inadequate.

12. It is true that the Director of Health Services had recommended revision of pay in favour of the Dressers. That by itself would not permit the petitioners to seek higher pay-scale as a matter of legal right. This may at best be a relevant circumstance which can be looked into by the State Government and if found that injustice is being done to the petitioners, it may be rectified.

13. Subject to these observations, I find that it is not possible for this Court to come to the conclusion that the respondents have acted illegally.

14. In the result, the petition fails and is hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)
(vjn)